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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 15th December, 2006:—

BILL NO. 98 OF 2006

A Bill further to amend the Securities Contracts (Regulation) Act, 1956.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Securities Contracts (Regulation) Amendment Act, 2006.

42 of 1956.

Amendment of section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the principal Act), in clause *(h)*, after sub-clause *(id)*, the following sub-clause shall be inserted, namely:—

"*(ie)* any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be,".

Insertion of new section 17A.

3. After section 17 of the principal Act, the following section shall be inserted, namely:—

Public issue and listing of securities referred to in sub-clause (*ie*) of clause (*h*) of section 2

"17A. (*1*) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (*ie*) of clause *(h)* of section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

(*2*) Every issuer referred to in sub-clause *(ie)* of clause (*h*) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

(*3*) Where the permission applied for under sub-section (*2*) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

Explanation.—In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall, for the said purposes, be substituted the first day thereafter which is not a holiday. 26 of 1881.

(*4*) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, *mutatis mutandis,* apply to the listing of the securities of the nature referred to in sub-clause *(ie)* of clause *(h)* of section 2 by the issuer, being a special purpose distinct entity.

Amendment of section 23.

4. In section 23 of the principal Act, in sub-section (*1*), in clause (*c*), for the word and figures "section 17", the words, figures and letter "section 17 or section 17A" shall be substituted.

Amendment of section 31.

5. In section 31 of the principal Act, for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —

(*a*) the manner, in which at least fifty-one per cent. of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (*7*) of section 4B by the public other than the shareholders having trading rights under sub-section (*8*) of that section;

(*b*) the eligibility criteria and other requirements under section 17A.".

STATEMENT OF OBJECTS AND REASONS

Securitisation is a form of financing involving pooling of financial assets and the issuance of securities that are re-paid from the cash flows generated by the assets. This is generally accomplished by actual sale of the assets to a bankruptcy remote vehicle, that is, a special purpose vehicle, which finances the purchase through the issuance of bonds. These bonds are backed by future cash flows of the asset pool. The most common assets for securitisation are mortgages, credit cards, auto and consumer loans, student loans, corporate debt, export receivables, off-shore remittances, etc.

2. Besides other advantages, securitisation (a) allows banks and financial institutions to keep these loans off their balance sheets, thus reducing the need for additional capital; (b) provides banks and financial institutions with alternative forms of funding risk transfer, a new investor base, potential capital relief and capital market development; (c) can reduce lending concentration, improve liquidity and improve access to alternate sources of funding for banks and financial institutions; (d) facilitates attainment of funding at lower cost as a result of isolating the assets from potential bankruptcy risk of the originator; (e) facilitates better matching of assets and liabilities and the development of the long-term debt market; (f) provides diversified pools of uniform assets; and (g) has the advantage of converting non-liquid loans or assets which cannot be easily sold to third party investors into liquid assets or marketable securities. Lower funding costs are also a result of movement of investments from less efficient debt markets to more efficient capital markets through the process of securitisation.

3. In India, the securitisation market remains underdeveloped. Although two major legislative initiatives, namely, (a) the amendment to the National Housing Bank Act, 1987 (NHB Act) in the year 2000; and (b) enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), have been taken, the market has not picked up because of the absence of the facility of trading on stock exchanges. The potential buyers get discouraged by the possibility of having to hold the certificate or instrument in respect of securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks.

4. Securitisation transactions under the NHB Act are not covered under the definition of "securities" in the Securities Contracts (Regulation) Act, 1956. As such, trading in certificates or instruments relating to such transactions cannot take place on stock exchanges and buyers of such securitised financial certificates or instruments are left with few exit options. Under the SARFAESI Act, while "security receipts" have been covered under the definition of "securities", the provisions of the said Act restrict sale and purchase only amongst qualified institutional buyers. Besides, the "security receipts" under the SARFAESI Act can be issued only by a securitisation company or a reconstruction company registered with the Reserve Bank of India. This obviously limits the interest in such receipts and the market has not taken off at all.

5. Keeping in view the potential of the market, international trends and consultations held with major institutional participants and market experts, it was decided to amend the Securities Contracts (Regulation) Act, 1956 and accordingly, the Securities Contracts (Regulation) Amendment Bill, 2005 was introduced in the Lok Sabha on the 16th December, 2005. The Bill was referred to the Standing Committee on Finance (hereinafter referred to as the "Committee") on 23rd December, 2005 for examination and report thereon. The Committee presented their report to the Lok Sabha on the 22nd May, 2006.

6. The Standing Committee in its report recognised the need for listing and trading of securitised certificates or instruments on the Stock Exchanges and expressed their agreement with the broad objectives of the proposals contained in the Securities Contracts (Regulation) Amendment Bill, 2005. However, it recommended a modified approach for regulation and development of market for such instruments. Government have examined the recommendations and decided to accept and act upon all of them. Since the approach

recommended by the Standing Committee and agreed to by the Government are different from the provisions in the Securities Contracts (Regulation) Amendment Bill, 2005, it is proposed to withdraw the said Bill and to move a revised Bill, viz., the Securities Contracts (Regulation) Amendment Bill, 2006 to amend the Securities Contracts (Regulation) Act, 1956 so as to provide, *inter alia,* to—

(i) include securitisation certificates or instruments under the definition of "securities" and to insert for the said purpose, a new sub-clause *(ie)* in clause *(h)* of section 2 of the Securities Contracts (Regulation) Act, 1956;

(ii) provide for disclosure based regulation for issue of the securitised certificates or instruments and procedure therefor and to insert for the said purpose, a new section 17A in the Securities Contracts (Regulation) Act, 1956 and make consequential amendments in section 31 to provide regulation making powers to SEBI.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 7th December, 2006.

P. CHIDAMBARAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill proposes to amend section 31 of the Securities Contracts (Regulation) Act, 1956 so as to confer power upon the Securities and Exchange Board of India to make regulations on matters such as the eligibility criteria and other requirements to be complied with by the issuers of securitised certificates or instruments.

2. The regulations made by the Securities and Exchange Board of India shall be laid, as soon as may be, after they are made, before each House of Parliament.

3. The matters in respect of which regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 96 OF 2006

A Bill further to amend the Information Technology Act, 2000.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Information Technology (Amendment) Act, 2006.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

PART II

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000

21 of 2000.

2. In the Information Technology Act, 2000 (hereinafter in this Part referred to as the principal Act), for the words "digital signature" occurring in the Chapter, section, sub-section and clause referred to in the Table below, the words "electronic signature" shall be substituted.

Substitution of words "digital signature" by words "electronic signature"

TABLE

S.No.	Chapter/section/sub-section/clause
(1)	clauses (*d*), (*g*), (*h*) and (*zg*) of section 2;
(2)	section 5 and its marginal heading;
(3)	marginal heading of section 6;
(4)	clauses (*a*), (*b*), (*c*) and (*e*) of section 10 and its marginal heading;
(5)	heading of Chapter V;
(6)	clauses (*f*) and (*g*) of section 18;
(7)	sub-section (*2*) of section 19;
(8)	sub-sections (*1*) and (*2*) of section 21 and its marginal heading;
(9)	sub-section (*3*) of section 25;
(10)	clause (*c*) of section 30;
(11)	clauses (*a*) and (*d*) of sub-section (*1*) and sub-section (*2*) of section 34;
(12)	heading of Chapter VII;
(13)	section 35 and its marginal heading;
(14)	section 64;
(15)	section 71;
(16)	sub-section (*1*) of section 73 and its marginal heading;
(17)	section 74; and
(18)	clauses (*d*), (*n*) and (*o*) of sub-section (*2*) of section 87.

3. In section 1 of the principal Act, for sub-section (*4*), the following sub-sections shall be substituted, namely:—

Amendment of section 1.

"(*4*) Nothing in this Act shall apply to documents or transactions specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto.

(*5*) Every notification issued under sub-section (*4*) shall be laid before each House of Parliament.".

4. In section 2 of the principal Act,—

Amendment of section 2.

(*A*) for clause (*j*), the following clause shall be substituted, namely:—

'(*j*) "computer network" means the inter-connection of one or more computers or computer systems through—

(*i*) the use of satellite, microwave, terrestrial line, wireless or other communication media; and

(*ii*) terminals or a complex consisting of two or more inter-connected computers whether or not the inter-connection is continuously maintained;';

(*B*) in clause (*n*), the word "Regulations" shall be omitted;

(*C*) after clause (*n*), the following clause shall be inserted, namely:—

'(*na*) "cyber cafe" means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public;';

(*D*) after clause (*t*), the following clauses shall be inserted, namely:—

'(*ta*) "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;

(*tb*) "Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate;';

(*E*) in clause (*v*), for the words "data, text", the words "data, message, text" shall be substituted;

(*F*) for clause (*w*), the following clause shall be substituted, namely:—

'(*w*) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes, but does not include body corporate referred to in section 43A;'.

Amendment of heading of Chapter II.

5. In Chapter II of the principal Act, for the heading, the heading "DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE" shall be substituted.

Insertion of new section 3A.

6. After section 3 of the principal Act, the following section shall be inserted, namely:—

Electronic signature.

"3A. (*1*) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (*2*), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which—

(*a*) is considered reliable; and

(*b*) may be specified in the Second Schedule.

(*2*) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if—

(*a*) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;

(*b*) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(*c*) any alteration to the electronic signature made after affixing such signature is detectable;

(*d*) any alteration to the information made after its authentication by electronic signature is detectable; and

(*e*) it fulfils such other conditions which may be prescribed.

(*3*) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(*4*) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure

for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(*5*) Every notification issued under sub-section (*4*) shall be laid before each House of Parliament.".

Insertion of new section 6A.

7. After section 6 of the principal Act, the following section shall be inserted, namely:—

Delivery of services by service provider.

'6A. (*1*) The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, any service provider to set up, maintain and upgrade the computerised facilities and perform such other services as it may specify, by notification in the Official Gazette.

Explanation.—For the purposes of this section, service provider so authorised includes any individual, private agency, private company, partnership firm, sole proprietor firm or any such other body or agency which has been granted permission by the appropriate Government to offer services through electronic means in accordance with the policy governing such service sector.

(*2*) The appropriate Government may also authorise any service provider authorised under sub-section (*1*) to collect, retain and appropriate such service charges, as may be prescribed by the appropriate Government for the purpose of providing such services, from the person availing such service.

(*3*) Subject to the provisions of sub-section (*2*), the appropriate Government may authorise the service providers to collect, retain and appropriate service charges under this section notwithstanding the fact that there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers.

(*4*) The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers under this section:

Provided that the appropriate Government may specify different scale of service charges for different types of services.'.

Insertion of new section 10A.

8. After section 10 of the principal Act, the following section shall be inserted, namely:—

Validity of contracts formed through electronic means.

"10A. Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.".

Amendment of section 12.

9. In section 12 of the principal Act, in sub-section (*1*), for the words "agreed with the addressee", the word "stipulated" shall be substituted.

Substitution of new sections for sections 15 and 16.

10. For sections 15 and 16 of the principal Act, the following sections shall be substituted, namely:—

Secure electronic signature.

'15. An electronic signature shall be deemed to be a secure electronic signature if—

(*i*) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and

(*ii*) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

Explanation.—In case of digital signature, the "signature creation data" means the private key of the subscriber.

Security procedures and practices.

16. The Central Government may, for the purposes of sections 14 and 15, prescribe the security procedures and practices:

Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.'.

Omission of section 20.

11. Section 20 of the principal Act shall be omitted.

Amendment of section 29.

12. In section 29 of the principal Act, in sub-section (*1*), for the words "any contravention of the provisions of this Act, rules or regulations made thereunder", the words "any contravention of the provisions of this Chapter" shall be substituted.

Amendment of section 30.

13. In section 30 of the principal Act,—

(*i*) in clause (*c*), after the word "assured", the word "and" shall be omitted;

(*ii*) after clause (*c*), the following clauses shall be inserted, namely:—

"(*ca*) be the repository of all Electronic Signature Certificates issued under this Act;

(*cb*) publish information regarding its practices, Electronic Signature Certificates and current status of such certificates; and".

Amendment of section 34.

14. In section 34 of the principal Act, in sub-section (*1*), in clause (*a*), the words "which contains the public key corresponding to the private key used by that Certifying Authority to digitally sign another Digital Signature Certificate" shall be omitted.

Amendment of section 35.

15. In section 35 of the principal Act, in sub-section (*4*), —

(*a*) the first proviso shall be omitted;

(*b*) in the second proviso, for the words "Provided further", the word "Provided" shall be substituted.

Amendment of section 36.

16. In section 36 of the principal Act, after clause (*c*), the following clauses shall be inserted, namely:—

"(*ca*) the subscriber holds a private key which is capable of creating a digital signature;

(*cb*) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;".

Insertion of new section 40A.

17. After section 40 of the principal Act, the following section shall be inserted, namely:—

Duties of subscriber of Electronic Signature Certificate.

"40A. In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed.".

Amendment of heading of Chapter IX.

18. In Chapter IX of the principal Act, in the heading, for the words "PENALTIES AND ADJUDICATION", the words "PENALTIES, COMPENSATION AND ADJUDICATION" shall be substituted.

Amendment of section 43.

19. In section 43 of the principal Act,—

(*a*) in the marginal heading, for the word "Penalty", the word "Compensation" shall be substituted;

(*b*) after clause (*h*), the following clause shall be inserted, namely:—

"(*i*) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means,".

Insertion of new section 43A.

20. After section 43 of the principal Act, the following section shall be inserted, namely:—

Compensation for failure to protect data.

'43A. Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected.

Explanation.—For the purposes of this section,—

(*i*) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;

(*ii*) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;

(*iii*) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.'.

Amendment of section 46.

21. In section 46 of the principal Act, in sub-section (*1*), for the words "direction or order made thereunder", the words "direction or order made thereunder which renders him liable to pay penalty or compensation," shall be substituted.

Amendment of heading of Chapter X.

22. In Chapter X of the principal Act, in the heading, the word "REGULATIONS" shall be omitted.

Amendment of section 48

23. In section 48 of the principal Act, in sub-section (*1*), the word "Regulations" shall be omitted.

Substitution of new sections for sections 49 to 52.

24. For sections 49 to 52 of the principal Act, the following sections shall be substituted, namely:—

Composition of Cyber Appellate Tribunal.

"49. (*1*) The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may, by notification in the Official Gazette, appoint.

(*2*) The selection of Chairperson and Members of the Cyber Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(*3*) Subject to the provisions of this Act—

(*a*) the jurisdiction, powers and authority of the Cyber Appellate Tribunal may be exercised by the Benches thereof;

(*b*) a Bench may be constituted by the Chairperson of the Cyber Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit:

Provided that every Bench shall be presided over by the Chairperson or the Judicial Member appointed under sub-section (*3*) of section 50;

(*c*) the Benches of the Cyber Appellate Tribunal shall sit at New Delhi and at such other places as the Central Government may, in consultation with

the Chairperson of the Cyber Appellate Tribunal, by notification in the Official Gazette, specify;

(*d*) the Central Government shall, by notification in the Official Gazette, specify the areas in relation to which each Bench of the Cyber Appellate Tribunal may exercise its jurisdiction.

(*4*) Notwithstanding anything contained in sub-section (*3*), the Chairperson of the Cyber Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(*5*) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Cyber Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of more Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.

Qualifications for appointment as Chairperson and Members of Cyber Appellate Tribunal.

50. (*1*) A person shall not be qualified for appointment as a Chairperson of the Cyber Appellate Tribunal unless he is, or has been, or is qualified to be, a Judge of a High Court.

(*2*) The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-section (*3*), shall be appointed by the Central Government from amongst persons, having special knowledge of, and professional experience in, information technology, telecommunication, industry, management or consumer affairs:

Provided that a person shall not be appointed as a Member, unless he is, or has been, in the service of the Central Government or a State Government, and has held the post of Additional Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than two years or Joint Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than seven years.

(*3*) The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central Government from amongst persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that Service for a period of not less than five years.

Term of office, conditions of service, etc., of Chairperson and Members.

51. (*1*) The Chairperson or Member of the Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(*2*) Before appointing any person as the Chairperson or Member of the Cyber Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

(*3*) An officer of the Central Government or State Government on his selection as the Chairperson or Member of the Cyber Appellate Tribunal, as the case may be, shall have to retire from service before joining as such Chairperson or Member.

Salary, allowances and other terms and conditions of service of Chairperson and Members

52. The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Chairperson or a Member of the Cyber Appellate Tribunal shall be such as may be prescribed.

Powers of superintendence, direction, etc.

52A. The Chairperson of the Cyber Appellate Tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that Tribunal and he shall, in addition to presiding over the meetings of the Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed.

52B. Where Benches are constituted, the Chairperson of the Cyber Appellate Tribunal may, by order, distribute the business of that Tribunal amongst the Benches and also the matters to be dealt with by each Bench. Distribution of business among Benches.

52C. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may deem proper to be heard, or *suo motu* without such notice, the Chairperson of the Cyber Appellate Tribunal may transfer any case pending before one Bench, for disposal to any other Bench. Power of Chairperson to transfer cases

52D. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Cyber Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.". Decision by majority.

25. In section 53 of the principal Act, for the words "Presiding Officer", the words "Chairperson or Member, as the case may be," shall be substituted. Amendment of section 53.

26. In section 54 of the principal Act, for the words "Presiding Officer" wherever they occur, the words "Chairperson or the Member" shall be substituted. Amendment of section 54.

27. In section 55 of the principal Act, for the words "Presiding Officer", the words "Chairperson or the Member" shall be substituted. Amendment of section 55.

28. In section 56 of the Principal Act, for the words "Presiding Officer", the word "Chairperson" shall be substituted. Amendment of section 56.

29. In section 61 of the principal Act, the following proviso shall be inserted at the end, namely:— Amendment of section 61.

"Provided that the court may exercise jurisdiction in cases where the claim for injury or damage suffered by any person exceeds the maximum amount which can be awarded under this Chapter.".

30. In section 64 of the principal Act,— Amendment of section 64

(*i*) for the words "penalty imposed", the words "penalty imposed or compensation awarded" shall be substituted;

(*ii*) in the marginal heading, for the word "penalty", the words "penalty or compensation" shall be substituted.

31. For sections 66 and 67 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for sections 66 and 67.

'66. If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees or with both. Computer related offences.

Explanation.—For the purposes of this section,—

(*a*) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code; 45 of 1860.

(*b*) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code. 45 of 1860.

66A. Any person who sends, by means of a computer resource or a communication device,— Punishment for sending offensive messages through communication service, etc.

(*a*) any content that is grossly offensive or has menacing character; or

(*b*) any content which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently makes use of such computer resource or a communication device,

shall be punishable with imprisonment for a term which may extend to two years and with fine.

Explanation.—For the purposes of this section, the term "communication device" means cell phones, personal digital assistance (PDA) or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.

Punishment for publishing or transmitting obscene material in electronic form.

67. Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

67A. Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Exception.—This section and section 67 does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form—

(*i*) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(*ii*) which is kept or used *bona fide* for religious purposes.'.

Amendment of section 68.

32. In section 68 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Any person who intentionally or knowingly fails to comply with any order under sub-section (*1*) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one lakh rupees or both.".

Substitution of new section for section 69.

33. For section 69 of the principal Act, the following section shall be substituted, namely:—

Power to issue directions for interception or monitoring or decryption of any information through any computer resource.

"69. (*1*) Where the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may subject to the provisions of sub-section (*2*), for reasons to be recorded in writing, by order, direct any agency of the Government to intercept or monitor or decrypt or cause to be intercepted or monitored or decrypted any information transmitted through any computer resource.

(*2*) The Central Government shall prescribe safeguards subject to which such interception or monitoring or decryption may be made or done, as the case may be.

(*3*) The subscriber or intermediary or any person incharge of the computer resource shall, when called upon by any agency which has been directed under sub-section (*1*), extend all facilities and technical assistance to—

(*a*) provide access to the computer resource containing such information;

(*b*) intercept or monitor or decrypt the information;

(*c*) provide information contained in computer resource.

(*4*) The subscriber or intermediary or any person who fails to assist the agency referred to in sub-section (*3*) shall be punished with an imprisonment for a term which may extend to seven years.".

Amendment of section 70.

34. In section 70 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

'(*1*) The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system.

Explanation.—For the purposes of this section, "Critical Information Infrastructure" means the computer resource, the incapacitation or destruction of which, shall have debilitating impact on national security, economy, public health or safety.';

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The Central Government shall prescribe the information security practices and procedures for such protected system.".

Insertion of new section 70A.

35. After section 70 of the principal Act, the following section shall be inserted, namely:—

Indiao Computer Emergency Response Team to serve as national nodal agency.

"70A. (*1*) The Indian Computer Emergency Response Team (CERT-In) shall serve as the national nodal agency in respect of Critical Information Infrastructure for co-ordinating all actions relating to information security practices, procedures, guidelines, incident prevention, response and report.

(*2*) For the purposes of sub-section (*1*), the Director of the Indian Computer Emergency Response Team may call for information pertaining to cyber security from the service providers, intermediaries or any other person.

(*3*) Any person who fails to supply the information called for under sub-section (*2*), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both.

(*4*) The Director of the Indian Computer Emergency Response Team may, by order, delegate his powers under this section to his one or more subordinate officers not below the rank of Deputy Secretary to the Government of India.".

Insertion of new section 72A.

36. After section 72 of the principal Act, the following section shall be inserted, namely:—

Punishment for disclosure of information in breach of lawful contract.

"72A. Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five lakh rupees, or with both.".

Substitution of new sections for sections 77 and 78.

37. For sections 77 and 78 of the principal Act, the following sections shall be substituted, namely:—

Compensation, penalties or confiscation not to interfere with other punishment.

"77. No compensation awarded, penalty imposed or confiscation made under this Act shall prevent the award of compensation or imposition of any other penalty or punishment under any other law for the time being in force.

Offences under sections 66, 66A, 72 and 72A to be compoundable.

77A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under sections 66, 66A, 72 and 72A may be compounded by the aggrieved person: 2 of 1974.

Provided that the provisions of this section does not apply where the accused is, by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind for such offence.

Cognizance of offences under sections 66, 66A, 72 and 72A.

77B. No court shall take cognizance of an offence punishable under sections 66, 66A, 72 and 72A, except upon a complaint made by the person aggrieved by the offence.

Power to investigate offences.

78. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of Deputy Superintendent of Police shall investigate any cognizable offence under this Act. 2 of 1974.

(*2*) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence under this Act, he shall cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(*3*) Any police officer receiving such information may exercise the same powers in respect of investigation (except the power to arrest without warrant) as an officer in charge of the police station may exercise in a cognizable case under section 156 of the Code of Criminal Procedure, 1973.". 2 of 1974.

Substitution of new Chapters for Chapter XII.

38. For Chapter XII of the principal Act, the following Chapters shall be substituted, namely:—

'CHAPTER XII

INTERMEDIARIES NOT TO BE LIABLE IN CERTAIN CASES

Exemption from liability of intermediary in certain cases.

79. (*1*) Notwithstanding anything contained in any other law for the time being in force but subject to the provisions of sub-sections (*2*) and (*3*), an intermediary shall not be liable for any third party information, data, or communication link made available by him.

(*2*) The provisions of sub-section (*1*) shall apply if—

(*a*) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored; or

(*b*) the intermediary does not—

(*i*) initiate the transmission,

(*ii*) select the receiver of the transmission, and

(*iii*) select or modify the information contained in the transmission.

(*3*) The provisions of sub-section (*1*) shall not apply if—

(*a*) the intermediary has conspired or abetted in the commission of the unlawful act;

(*b*) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary

fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

(*4*) Intermediary shall observe such other guidelines as the Central Government may prescribe in this behalf.

Explanation.—For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.

CHAPTER XIIA

EXAMINER OF ELECTRONIC EVIDENCE

Central Government to notify Examiner of Electronic Evidence.

79A. The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.

Explanation.—For the purposes of this section, "electronic form evidence" means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.'.

Omission of section 80.

39. Section 80 of the principal Act shall be omitted.

Amendment of section 81.

40. In section 81 of the principal Act, the following proviso shall be inserted at the end, namely:—

"Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957 or the Patents Act, 1970.".

14 of 1957.
39 of 1970.

Amendment of section 82.

41. In section 82 of the principal Act,—

(*a*) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Chairperson, Members, officers and employees to be public servants.";

(*b*) for the words "Presiding Officer", the words "Chairperson, Members" shall be substituted.

Amendment of section 84.

42. In section 84 of the principal Act, for the words "Presiding Officer", the words "Chairperson, Members" shall be substituted.

Insertion of new sections 84A, 84B and 84C.

43. After section 84 of the principal Act, the following sections shall be inserted, namely:—

Modes or methods for encryption.

"84A. The Central Government may, for secure use of the electronic medium and for promotion of e-governance and e-commerce, prescribe the modes or methods for encryption.

Punishment for abetment of offences.

84B. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for the offence under this Act.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Punishment for attempt to commit offences.

84C. Whoever attempts to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made for the punishment of such attempt, be punished with imprisonment of any description provided for the

offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.".

Amendment of section 87.

44. In section 87 of the principal Act,—

(*A*) in sub-section (*2*),—

(*i*) for clause (*a*), the following clauses shall be substituted, namely:—

"(*a*) the conditions for considering reliability of electronic signature or electronic authentication technique under sub-section (*2*) of section 3A;

(*aa*) the procedure for ascertaining electronic signature or authentication under sub-section (*3*) of section 3A;

(*ab*) the manner in which any information or matter may be authenticated by means of electronic signature under section 5;";

(*ii*) after clause (*c*), the following clause shall be inserted, namely:—

"(*ca*) the manner in which the authorised service provider may collect, retain and appropriate service charges under sub-section (*2*) of section 6A;";

(*iii*) for clause (*e*), the following clauses shall be substituted, namely:—

"(*e*) the manner of storing and affixing electronic signature creation data under section 15;

(*ea*) the security procedures and practices under section 16;";

(*iv*) clause (*g*) shall be omitted;

(*v*) after clause (*m*), the following clause shall be inserted, namely:—

"(*ma*) the form of application and fee for issue of Electronic Signature Certificate under section 35;

(*vi*) after clause (*o*), the following clauses shall be inserted, namely:—

"(*oa*) the duties of subscribers under section 40A;

(*ob*) the reasonable security practices and procedures and sensitive personal data or information under section 43A;";

(*vii*) in clause (*r*), for the words "Presiding Officer", the words "Chairperson and Members" shall be substituted;

(*viii*) in clause (*s*), for the words "Presiding Officer", the words "Chairperson and Members" shall be substituted;

(*ix*) for clause (*w*), the following clauses shall be substituted, namely:—

"(*w*) the powers and functions of the Chairperson of the Cyber Appellate Tribunal under section 52A;

(*x*) the safeguards for interception or monitoring or decryption under sub-section (*2*) of section 69;

(*y*) the information security practices and procedures for protected system under section 70;

(*z*) the guidelines to be observed by the intermediaries under sub-section (*4*) of section 79;

(*za*) the modes or methods for encryption under section 84A;";

(*B*) in sub-section (*3*),—

(*i*) for the words, brackets, letter and figures "Every notification made by the Central Government under clause (*f*) of sub-section (*4*) of section 1 and every rule made by it", the words "Every rule made by the Central Government" shall be substituted;

(*ii*) the words "the notification or" wherever they occur, shall be omitted.

Amendment of section 90.

45. In section 90 of the principal Act, in sub-section (*2*), for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) the form of information book under sub-section (*2*) of section 78.".

Omission of sections 91, 92, 93 and 94.

46. Sections 91, 92, 93 and 94 of the principal Act shall be omitted.

Substitution of new Schedules for First Schedule and Second Schedule.

47. For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

"FIRST SCHEDULE

[*See* sub-section (*4*) of section 1]

DOCUMENTS OR TRANSACTIONS TO WHICH THE ACT SHALL NOT APPLY

Sl. No.	Description of documents or transactions
1.	A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881. (26 of 1881.)
2.	A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882. (7 of 1882.)
3.	A trust as defined in section 3 of the Indian Trusts Act, 1882. (2 of 1882.)
4.	A will as defined in clause (*h*) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called. (39 of 1925.)
5.	Any contract for the sale or conveyance of immovable property or any interest in such property.

THE SECOND SCHEDULE

[*See* sub-section (*1*) of section 3A]

ELECTRONIC SIGNATURE OR ELECTRONIC AUTHENTICATION TECHNIQUE AND PROCEDURE

Sl. No.	Description	Procedure
(1)	(2)	(3)

".

Omission of Third Schedule and Fourth Schedule.

48. The Third Schedule and the Fourth Schedule to the principal Act shall be omitted.

PART III

AMENDMENT OF THE INDIAN PENAL CODE

Amendment of Indian Penal Code.

49. In the Indian Penal Code— (45 of 1860.)

Amendment of section 4

(*a*) in section 4,—

(*i*) after clause (*2*), the following clause shall be inserted, namely:—

"(*3*) any person in any place without and beyond India committing offence targeting a computer resource located in India.";

(*ii*) for the *Explanation,* the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this section—

(*a*) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(*b*) the expression "computer resource" shall have the meaning assigned to it in clause (*k*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000.'; 21 of 2000.

Amendment of section 40.

(*b*) in section 40, in clause (*2*), after the figure "117", the figures and word "118, 119 and 120" shall be inserted;

Amendment of section 118.

(*c*) in section 118, for the words "voluntarily conceals, by any act or illegal omission, the existence of a design", the words "voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design" shall be substituted;

Amendment of section 119.

(*d*) in section 119, for the words "voluntarily conceals, by any act or illegal omission, the existence of a design", the words "voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design" shall be substituted;

Insertion of new section 417A.

(*e*) after section 417, the following section shall be inserted, namely:—

Punishment for identity theft.

"417A. Whoever, cheats by using the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.";

Insertion of new section 419A.

(*f*) after section 419, the following section shall be inserted, namely:—

Punishment for cheating by personation using computer resource.

"419A. Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—The expression "computer resource" shall have the meaning assigned to it in clause (*k*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000."; 21 of 2000.

Amendment of section 464.

(*g*) in section 464 , for the words "digital signature" wherever they occur, the words "electronic signature" shall be substituted;

Insertion of new Chapter XXIA.

(*h*) after Chapter XXI, the following Chapter shall be inserted, namely:—

"CHAPTER XXIA

OF PRIVACY

Punishment for violation of privacy.

502A. Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with simple imprisonment for a term which may extend to two years or with fine not exceeding two lakh rupees, or with both.

Explanation.—For the purposes of this section—

(*a*) "transmit" means to send electronically a visual image with the intent that it be viewed by a person or persons;

(*b*) "capture", with respect to an image, means to videotape, photograph, film or record by any means;

(*c*) "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast;

(*d*) "publishes" means reproduction in the printed or electronic form and making it available for public;

(*e*) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that—

(*i*) he or she could disrobe in privacy, without being concerned that an image of his private area is being captured; or

(*ii*) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.".

PART IV

AMENDMENT OF THE INDIAN EVIDENCE ACT, 1872

1 of 1872.

50. In the Indian Evidence Act, 1872,— Amendment of Indian Evidence Act.

(*a*) in section 3 relating to interpretation clause, in the paragraph appearing at the end, for the words "digital signature" and "Digital Signature Certificate", the words "electronic signature" and "Electronic Signature Certificate" shall respectively be substituted; Amendment of section 3.

(*b*) after section 45, the following section shall be inserted, namely:— Insertion of new section 45A.

"45A. When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact. Opinion of Examiner of Electronic Evidence.

21 of 2000.

Explanation.—For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.";

(*c*) in section 47A,— Amendment of section 47A.

(*i*) for the words "digital signature", the words "electronic signature" shall be substituted;

(*ii*) for the words "Digital Signature Certificate", the words "Electronic Signature Certificate" shall be substituted;

(*d*) in section 67A, for the words "digital signature" wherever they occur, the words "electronic signature" shall be substituted; Amendment of section 67A.

(*e*) in section 85A, for the words "digital signature" at both the places where they occur, the words "electronic signature" shall be substituted; Amendment of section 85A.

(*f*) in section 85B, for the words "digital signature" wherever they occur, the words "electronic signature" shall be substituted; Amendment of section 85B.

(*g*) in section 85C, for the words "Digital Signature Certificate", the words "Electronic Signature Certificate" shall be substituted; Amendment of section 85C.

(*h*) in section 90A, for the words "digital signature" at both the places where they occur, the words "electronic signature" shall be substituted; Amendment of section 90A.

PART V

AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of Code of Criminal Procedure.

51. In the Code of Criminal Procedure, 1973,— 2 of 1974.

Insertion of new section 198B.

(*a*) after section 198A, the following section shall be inserted, namely:—

Prosecution of offences under sections 417A, 419A and 502A of Indian Penal Code.

"198B. No court shall take cognizance of an offence punishable under sections 417A, 419A and 502A of the Indian Penal Code, except upon a complaint made by the person aggrieved by the offence."; 45 of 1860.

Amendment of section 320

(*b*) in section 320,—

(*i*) in sub-section (*1*), in the Table, after the entries relating to—

(*A*) sections 352, 355 and 358, the following entries shall be inserted, namely:—

1	2	3
"Identity theft	417A	The person against whom the offence was committed.";

(*B*) section 502, the following entries shall be inserted, namely:—

1	2	3
"Violation of privacy	502A	The person against whom the offence was committed.";

(*ii*) in sub-section (*2*), in the Table, after the entries relating to section 419, the following entries shall be inserted, namely:—

1	2	3
"Cheating by personation by using computer resource	419A	The person against whom the offence was committed.";

(*iii*) in the First Schedule, under the heading "I. OFFENCES UNDER THE INDIAN PENAL CODE",—

(*A*) after the entries relating to section 417, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"417A	Identity theft	Imprisonment for 2 years and fine.	Non-cognizable	Bailable	Any magistrate.";

(*B*) after the entries relating to section 419, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"419A	Cheating by personation by using computer resource	Imprisonment for 5 years and fine.	Cognizable	Bailable	Any magistrate.";

(*C*) after the entries relating to section 502, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"502A	Violation of privacy	Imprisonment for 2 years or fine or both.	Non-cognizable	Bailable	Any magistrate.".

STATEMENT OF OBJECTS AND REASONS

The Information Technology Act was enacted in the year 2000 with a view to give a fillip to the growth of electronic based transactions, to provide legal recognition for e-commerce and e-transactions, to facilitate e-governance, to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide.

2. With proliferation of information technology enabled services such as e-governance, e-commerce and e-transactions, protection of personal data and information and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonisation with the provisions of the Information Technology Act. Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety, so it has become necessary to declare such infrastructure as a protected system so as to restrict its access.

3. A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.

4. The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on Electronic Signatures. The General Assembly of the United Nations by its resolution No. 56/80, dated 12th December, 2001, recommended that all States accord favourable consideration to the said Model Law on Electronic Signatures. Since the digital signatures are linked to a specific technology under the existing provisions of the Information Technology Act, it has become necessary to provide for alternate technology of electronic signatures for bringing harmonisation with the said Model Law.

5. The service providers may be authorised by the Central Government or the State Goverment to set up, maintain and upgrade the computerised facilities and also collect, retain and appropriate service charges for providing such services at such scale as may be specified by the Central Government or the State Government.

6. The Bill seeks to achieve the above objects.

NEW DELHI; DAYANIDHI MARAN.

The 6th December, 2006.

Notes on clauses

Clause 2.—This clause seeks to substitute the words "digital signatures" by the words "electronic signatures" as provided in the Table thereunder so as to make it technology neutral.

Clause 3.—This clause seeks to amend sub-section (*4*) of section 1 so as to exclude Negotiable Instruments, power of attorney, trust, will and contract from the application of the Act and to empower the Central Government to amend the entries in the First Schedule.

Clause 4.—This clause seeks to amend section 2 and to define certain new expressions.

Clause 5.—This clause seeks to substitute heading of Chapter II with new heading 'DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE' so as to make the Act technology neutral.

Clause 6.—This clause seeks to insert a new section 3A which provides for authentication of electronic record by electronic signature or electronic authentication technique. It also empowers the Central Govemment to insert in the Second Schedule any electronic signature or electronic authentication technique and prescribe the procedure for the purpose of ascertaining the authenticity of electronic signature.

Clause 7.—This clause seeks to insert a new section 6A which empowers the Central Government as well as the State Government to authorise the service providers for providing efficient services through electronic means to the public against appropriate service charges. Further the said section empowers the Central Government as well as the State Government to specify the scale of service charges.

Clause 8.—This clause seeks to insert a new section 10A to provide for contracts formed through electronic means.

Clause 9.—This clause seeks to make amendment in sub-section (*1*) of section 12 which is of a consequential nature.

Clause 10.—This clause seeks to substitute sections 15 and 16 so as to remove certain inconsistencies in the procedures relating to secure electronic signatures and to provide for security procedures and practices.

Clause 11.—This clause provides for omission of section 20 with a view to empower the Certifying Authority under section 30 to act as repository of electronic signatures.

Clause 12.—This clause seeks to make amendment in sub-section (*1*) of section 29 with a view to limit the powers of the Controller in respect of access to any computer system only with reference to the provisions of Chapter VI and not with reference to the provisions of entire Act. The powers with respect to access to any computer system under other provisions of the Act are proposed to be entrusted to the Central Government under section 69.

Clause 13.—This clause seeks to amend section 30 with a view to empower the Certifying Authority to be the repository of all Electronic Signature Certificates issued under the Act.

Clause 14.—This clause seeks to amend section 34 with a view to make the provisions of that section technology neutral.

Clause 15.—This clause seeks to amend section 35 with a view to omit the first proviso to sub-section (*4*) so as to make the provisions of that section technology neutral.

Clause 16.—This clause seeks to amend section 36 so as to add two more representations for issuance of digital signature.

Clause 17.—This clause seeks to insert a new section 40A which provides for duties of the subscriber of Electronic Signature Certificate.

Clause 18.—This clause seeks to make an amendment in the Chapter heading of Chapter IX with a view to provide for making compensation for damages in respect of various contraventions.

Clause 19.—This clause seeks to amend section 43 so as to add certain more contraventions for damaging computer or computer system.

Clause 20.—This clause seeks to insert a new section 43A so as to empower the Central Government to provide for reasonable security practices and procedures and the sensitive personal data or information and also to provide for compensation for failure to protect sensitive personal data or information stored in a computer resource.

Clause 21.—This clause seeks to make amendment in section 46 with a view to make consequential changes.

Clauses 22 and 23.—These clauses seek to make amendments in the heading of Chapter X and section 48 with a view to suitably modify the same with the title of the Cyber Appellate Tribunal as mentioned in clause (*n*) of sub-section (*1*) of section 2.

Clause 24.—This clause seeks to substitute sections 49 to 52 and insert new sections 52A to 52D. Section 49 provides for the establishment of the Cyber Appellate Tribunal. Sections 50, 51 and 52 provide for qualifications, term of office, conditions of service and salary and allowances of the Chairperson and Members of the said Tribunal. Sections 52A to 52D provide for powers of the Chairperson and distribution of business among the Benches.

Clauses 25 to 28.—These clauses seek to make amendments in sections 53 to 56 with a view to make the Cyber Appellate Tribunal a multi-member body.

Clause 29.—This clause seeks to insert a proviso in section 61 so as to provide jurisdiction to courts in certain cases.

Clause 30.—This clause seeks to amend section 64 so as to recover the compensation also as the arrears of land revenue.

Clause 31.—This clause seeks to substitute sections 66 and 67 and insert new sections 66A and 67A with a view to make certain more computer related wrong actions punishable and enhance the penalty.

Clause 32.—This clause seeks to amend section 68 so as to reduce the quantum of punishment and fine.

Clause 33.—This clause seeks to substitute section 69 so as to empower the Central Government to issue directions to an agency for interception or monitoring or decryption of any information transmitted through any computer resource. It also provides for punishment for rendering assistance to such agency.

Clause 34.—This clause seeks to amend section 70 so as to enable the Central Government as well as the State Government to declare any computer resource as protected system. It also provides for information security practices and procedures for such protected system.

Clause 35.—This clause seeks to insert a new section 70A for empowering Indian Computer Emergency Response Team to serve as a national nodal agency in respect of Critical Information Infrastructure.

Clause 36.—This clause seeks to insert a new section 72A which makes the disclosure of information in breach of a lawful contract punishable.

Clause 37.—This clause seeks to substitute sections 77 and 78 and to insert new sections 77A and 77B. Section 77 provides that compensation, penalties or confiscation under the Act shall not interfere with the award of compensation or imposition of any other penalty or punishment under any other law for the time being in force. Section 77A provides for certain offences relating to computer resources as compoundable offences. Section 77B provides that Court shall take cognizance only on a complaint and not otherwise. Section 78 provides for power to investigate offences.

Clause 38.—This clause seeks to substitute Chapter XII and to insert a new Chapter XIIA which provides for exemption of intermediaries from liability in certain circumstances and also empowers the Central Government to prescribe guidelines to be observed by intermediaries for providing services. It also empowers the Central Government to specify the Examiner of Electronic Evidence.

Clause 39.—This clause seeks to omit section 80 of the Act with a view to entrust the powers of search and seizure, etc., to a Police Officer not below the rank of Deputy Superintendent of Police and for that purpose necessary provisions have been included in section 78 by substituting the same *vide* clause 37.

Clause 40.— This clause proposes to insert a proviso to section 81 so that the rights conferred under this section shall be supplementary to and not in derogation of the provisions of the Copyright Act or the Patents Act.

Clause 41.—This clause seeks to make amendment in section 82 with a view to declare the Chairperson, Members, officers and employees as public servants.

Clause 42.—This clause seeks to amend section 84 with a view to make consequential changes.

Clause 43.—This clause seeks to insert three new sections 84A, 84B and 84C with a view to empower the Central Government to prescribe the modes and methods of encryption for secure use of electronic media and for promotion of e-governance and e-commerce applications. Further it provides that abetment of and attempt to commit any offence shall also be punishable.

Clauses 44 and 45.—These clauses seek to make amendments in sections 87 and 90 respectively, which are of consequential nature.

Clause 46.—This clause seeks to omit sections 91 to 94 for the reason that these provisions have become redundant as necessary modifications have already been carried out in the Indian Penal Code and other related enactments.

Clause 47.—This clause seeks to substitute new Schedules for the First Schedule and the Second Schedule so as to provide for documents or transactions to which the provisions of the Act shall not apply. It also enables the list of electronic signature or electronic authentication technique and procedure for affixing such signature to be specified in the Second Scheudule.

Clause 48.—This clause seeks to omit the Third Schedule and Fourth Schedule as consequential to the omission of provisions of sections 93 and 94.

Clause 49.—This clause provides for certain amendments in the Indian Penal Code so as to specify certain offences relating to the computer resource.

Clause 50.—This clause provides for certain consequential amendments in the Indian Evidence Act pursuant to the changes proposed in the Act.

Clause 51.—This clause provides for amendments in the Code of Criminal Procedure by inserting new section 198B and amending section 320 so as to make certain consequential amendments pursuant to the changes proposed in the Act.

FINANCIAL MEMORANDUM

Clause 24 of the Bill seeks to provide for multi-member composition of the Cyber Appellate Tribunal but the number of Members may be determined by the Central Government in the times to come. The salary, allowances and retirement benefits payable to the Chairperson and other Members of the Cyber Appellate Tribunal as and when appointed shall be met out of the annual Budget estimates of the Ministry. For the present, the Bill does not involve any additional recurring or non-recurring expenditure out of the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend sub-section (*4*) of section 1 which empowers the Central Government to amend the First Schedule by adding or deleting entries relating to documents or transactions to which the provisions of the Act shall not apply.

2. Clause 6 of the Bill seeks to insert a new section 3A *vide* which the Central Government is being empowered to—

(*a*) prescribe the conditions to be fulfilled for considering any electronic signature or electronic authentication technique as reliable;

(*b*) prescribe the procedure for affixing and authentication of electronic signature; and

(*c*) insert in the Second Schedule any electronic signature or electronic authentication technique and the procedure for affixing such signatures.

3. Clause 7 of the Bill seeks to insert a new section 6A which empowers the Central Government as well as the State Government to authorise the service provider to collect, retain and appropriate service charges. Further the said section empowers the Central Government and the State Government to specify, by notification, the scale of service charges.

4. Clause 10 of the Bill seeks to amend section 15 which empowers the Central Government to prescribe the manner of storing and affixing the signature creation data for a secure electronic signature. The said clause also seeks to amend section 16 which empowers the Central Government to prescribe the security procedures and practices for a secure electronic record and a secure electronic signature.

5. Clause 17 of the Bill seeks to insert a new section 40A which empowers the Central Government to prescribe the duties to be performed by the subscriber of the Electronic Signature Certificate.

6. Clause 20 of the Bill seeks to insert a new section 43A which empowers the Central Government to prescribe, in consultation with professional bodies or associations, the reasonable security practices and procedures and the sensitive personal data or information.

7. Clause 24 of the Bill seeks to substitute section 49 which empowers the Central Government to specify by notification the places for sitting of the Cyber Appellate Tribunal and the areas of their jurisdiction. Further, the said clause seeks to insert a new section 52A which empowers the Central Government to prescribe powers and functions of the Chairperson of the Cyber Appellate Tribunal.

8. Clause 33 of the Bill seeks to amend section 69 which empowers the Central Government to prescribe the safeguards for interception or monitoring or decryption.

9. Clause 34 of the Bill seeks to substitute sub-section (*1*) of section 70 which empowers the Central Government as well as the State Government to declare by notification any computer resource which affects the facility of Critical Information Infrastructure to be a protected system. Further, the said clause seeks to insert a new sub-section (*4*) to section 70 which empowers the Central Government to prescribe the information security practices and procedures for the protected system.

10. Clause 37 of the Bill seeks to substitute section 78 which empowers the State Government to prescribe the form of information book.

11. Clause 38 of the Bill seeks to substitute section 79. Sub-section (*4*) of the said section empowers the Central Government to prescribe the guidelines to be observed by

intermediary. Further, the said clause seeks to insert another new section 79A which empowers the Central Government to specify by notification the Examiner of Electronic Evidence for providing expert opinion on electronic form evidence.

12. Clause 42 of the Bill seeks to insert a new section 84A which empowers the Central Government to prescribe the modes and methods for encryption.

13. The matters in respect of which the said rules may be made or notification issued are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself.

14. The delegation of legislative power is, therefore, of a normal character.

P.D.T. ACHARY,
Secretary-General.

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